

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Advanced Television Systems and)
Their Impact Upon the Existing)
Television Broadcast Service)

RM-9260

ORIGINAL

To: The Commission

COMMENTS OF KM COMMUNICATIONS, INC.

KM Communications, Inc. ("KM"), pursuant to Section 1.405(a) of the Commission's Rules, 47 C.F.R. § 1.405(a), respectfully submits these Comments in response to the petition for rulemaking filed by the Community Broadcasters Association ("CBA") in the above-captioned proceeding.¹ The Petition proposes the creation of a new primary class (i.e., a "Class A") of television stations for certain qualified Low Power Television ("LPTV") stations that provide substantial local or specialized programming to their communities. In support of the Petition and these Comments, the following is shown:

1. KM, a minority- and female-owned Illinois corporation, is the licensee of four LPTV stations, all in major television markets.² and is also building upon its LPTV

¹ See Advanced Television Systems and Their Impact Upon the Existing Television Service, Petition for Rulemaking, RM-9260, filed September 30, 1997 and amended March 18, 1998, by CBA (the "Petition"). Statements in support of or opposition to the Petition may be filed on or before May 22, 1998. See Public Notice, Petition for Rulemaking Filed For "Class A" TV Service, RM-9260, Mimeo No. 82996 (Mass Media Bureau, released April 21, 1998)(the "Class A Public Notice").

² KM is the licensee of WOCH-LP and WOCK-LP, Chicago, Illinois; WMKE-LP, Milwaukee, Wisconsin; and WSKC-LP, Atlanta, Georgia.

broadcasting experiences to expand into full power broadcasting.³ KM currently provides programming on its LPTV stations targeted toward local ethnic and minority communities in its markets, including foreign language programming, as well as other alternative programming. Accordingly, as a licensee of the type of LPTV stations that would qualify for the proposed new primary Class A status, KM is interested in this proceeding, and KM supports the Petition and the CBA's efforts.

2. Since 1994, KM has invested considerable time and resources in upgrading its LPTV stations, to improve their coverage and specifically to reach certain ethnic and minority communities, so that KM could provide specialized programming targeted to the interests of those local communities. During this process, KM has invested about \$2 million in its LPTV stations to attain its goals, and recently began broadcasting its local and specialized programming. For example, on its station WOCH-LP, Channel 28, Chicago, Illinois, KM provides: (i) 50 minutes per day (combined over two time slots) on 6 days per week (or a total of 3 hours per week) of locally-produced local news in foreign language; (ii) a locally-produced 30 minute special every week, with local community leaders or prominent foreign dignitaries of interest to local ethnic or minority communities; and (iii) 12 hours of other foreign language programming (currently in Korean, Russian and Spanish) every day, 7 days per week. KM provides or has plans to provide similar locally-produced and specialized foreign language programming on its other LPTV stations.

³ KM is the permittee or its principal has interests in the permittee (or anticipates holding interests in such permittees under settlements pending before the Commission) for several new full power television and FM radio stations, and has several more applications pending for additional new full power commercial television and commercial radio stations.

3. Having made such a substantial investment in its LPTV stations, KM has been greatly concerned with just how "secondary" the Commission has viewed the secondary status of LPTV stations during the digital television ("DTV") proceeding,⁴ and the prospects for its stations to survive the DTV transition, as expressed in KM's pleadings in that proceeding.⁵ The Commission's actions in response to the Petition will have a direct effect on KM's future decisions whether to continue to invest in and improve the services provided by its LPTV stations, regarding its local and specialized programming, and otherwise.

4. The CBA proposes that Class A television stations be required to place a certain specified minimum field strength contour over 75% of the community of license, whether operating with an analog or digital transmitter.⁶ KM generally supports the CBA proposal, and agrees with the purpose behind the rule, of ensuring effective service to the community of license. However, KM notes that in certain major markets, a Class A television station may not be able to achieve the required 75% coverage, based on the maximum effective radiated power

⁴ Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268.

⁵ Specifically, when KM acquired its LPTV stations, and even when KM began the process to upgrade the stations in 1994, KM recognized and could evaluate the risk that as a secondary service it could be displaced by a full power television station. However, KM could not have reasonably anticipated the Commission's decisions which placed the entire industry at risk of displacement so that a block of channels could be reallocated for other services and/or auctioned off to generate revenues for the federal government.

⁶ See Petition, Appendix A at 3-4 (proposing language for amendment of Section 73.625(a)(1), regarding DTV transmitter locations, and Section 73.683(a) [*sic*, should be Section 73.685(a)], regarding analog transmitter locations). For Class A television stations on Channels 2 to 6, the CBA proposes minimum field strengths of 22 dBu for DTV and 62 dBu for analog transmitters; for Channels 7 to 13, minimum field strengths of 31 dBu for DTV and 68 dBu for analog transmitters; and for Channels 14 to 69, minimum field strengths of 36 dBu for DTV and 74 dBu for analog transmitters. Id.

and interference protection requirements currently in effect or proposed, due simply to the large geographic size of the community of license. For example, KM's station WOCK-LP, which operates on Channel 13 and is licensed to Chicago, Illinois, may not satisfy the requirement of coverage of 75% of Chicago, even though the entire service area within the principal community contour may lie within Chicago's geographic boundaries⁷ (or over water, over Lake Michigan). KM requests that the Commission propose and adopt rules which would accommodate such situations, perhaps by providing that the "minimum field strength must be provided over at least 75% of the community of license of a Class A television station or 75% of the Class A television station's minimum field strength contour must be over the station's community of license" (proposed new language underlined). KM submits that the proposed additional language serves the purposes of the rule, as well as the public interest, by ensuring that the Class A television station provides effective service to the community of license. Alternatively, KM requests that the Commission clarify that waivers of the 75% principal community coverage requirement would be granted on a case-by-case basis in the circumstances described by KM.

5. KM also supports several key points made by the CBA in its proposed language for a new Section 73.627.⁸ As proposed by the CBA, LPTV stations would have one year from the effective date of the new rules to file an application for Class A status, and the application would include a showing based on the programming provided and the compliance with certain Commission rules for full power television stations during the three month period immediately

⁷ The true "community" in larger cities may include adjacent counties that may surround the actual "city limits" but make up part of the metropolitan area in some cases.

⁸ See Petition, Appendix A at 1.

preceding the filing of the application. KM believes this approach is more equitable than alternative proposals that would require compliance with certain criteria during some time period prior to the adoption of the criteria (for example, providing some specified number of hours of local programming as of some fixed date in the past). KM supports the CBA's proposal, which would ensure that any LPTV station willing to meet the qualifying criteria prospectively would have the opportunity to do so, and to apply for the Class A status, which is a fundamentally fairer procedure.

6. KM also interprets the proposed new Section 73.627(b)(ii) to permit programming produced within the principal community contour of one of its stations and carried on its other stations in other communities to qualify as programming which meets the criteria required to qualify for Class A status. KM submits that the Commission should also consider giving credit for certain specialized programming not produced within the principal community contour of a station or commonly-owned station, where the programming is not otherwise available to the community. More specifically, for example, KM submits that the broadcast of foreign language programming (that is not produced locally) should be considered and accorded the same treatment as locally produced programming for the purpose of qualifying for Class A status. KM is sensitive to the need for criteria for the qualifying programming that can be readily quantified and enforced, and therefore would support limiting this broader category of "specialized" programming to specific identifiable types of programming, such as foreign language programming, as may be necessary.

7. KM submits that a new Class A television station should be accorded primary status with protection against interference from any other stations except for (i) existing full

power analog and DTV stations operating, or future full power analog and DTV stations that become authorized to operate, on a channel specified in the allotment tables⁹ as of the date that the Class A application is filed; and (ii) LPTV or TV translators, to the extent of the protected contours authorized for such stations as of the date the Class A application is filed.¹⁰

8. KM believes that a primary Class A status will be vital to the future success of the LPTV industry in general, and for LPTV stations such as KM's that serve ethnic and minority populations, in particular. As some members of the Commission have recognized in their recent public statements, it has become increasingly more difficult for minorities to have a mass media voice, through station ownership or management positions with influence over programming decisions. In KM's experience, it is also practically impossible to lease time on full power stations, and uneconomical to lease access on cable television systems, to run programming targeted toward ethnic and minority communities, especially in the larger television markets where there tends to be larger concentrations of ethnic and minority populations. LPTV stations currently provide the most viable alternative for such specialized programming, and provisions for a primary Class A status for LPTV stations providing that type of programming would therefore serve the public interest, and should be adopted.

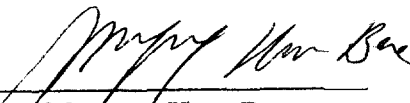
⁹ See 47 C.F.R. §§ 73.606(b) (analog TV Table of Allotments) and 73.622(b) (DTV Table of Allotments).

¹⁰ See Class A Public Notice at 2; but see Petition at 1. Although KM could understand limiting the protection for such existing full power analog and DTV stations to their authorized Grade B contour, see Class A Public Notice at 2, such a limitation may not make sense if future full power analog and DTV stations that become authorized to operate on a vacant TV or DTV allotment channel are protected based on maximum facilities; therefore, KM does not express an opinion on the appropriate contour for protection to full power analog and DTV stations.

8. Wherefore, the above Comments being considered, KM respectfully requests that the Commission adopt a Notice for Proposed Rulemaking proposing rules for a new primary Class A status for certain qualified LPTV stations providing substantial local or specialized programming, consistent with the comments of KM expressed herein.

Respectfully submitted,

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May 22, 1998

CERTIFICATE OF SERVICE

I, Myoung Hwa Bae, hereby certify that on or before this 22nd day of May, 1998, copies of the foregoing "Comments of KM Communications, Inc." have been served by first-class United States mail, postage prepaid, upon the following:

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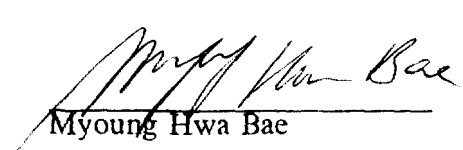
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